

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06CV81-1-MU

SILVANO GUERRA DIAZ,
Petitioner,
v.
REGINALD WEISNER,
Respondent.

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion for Entry of Default and Petitioner's Motion for Default Judgment, both filed April 21, 2006.

On February 23, 2006, Petitioner filed a federal petition for writ of habeas corpus. On March 6, 2006, this Court ordered the Attorney General of North Carolina to respond within forty days to Petitioner's federal habeas petition.

Petitioner has now filed two motions asserting that the time for the Attorney General to respond has passed and asking that a default judgment be entered in his favor. A review of the docket sheet reveals that the Court's Order setting forth the deadline at issue was inadvertently sent to the United States Attorney's office. Upon discovering this error on March 20, 2006, a copy of the order was sent to the Attorney General's office. The Attorney General has forty days from the date the Order was resent in which to respond to Petitioner's federal habeas petition. Because the time has not yet expired to respond, entry of default would not be proper.

THEREFORE, IT IS HEREBY ORDERED that:

1. Petitioner's Motion for Entry of Default (Doc. # 3) is DENIED; and
2. Petitioner's Motion for Default Judgment (Doc. # 4) is DENIED.

IT IS SO ORDERED.

Signed: April 24, 2006



Graham C. Mullen
United States District Judge

